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EXAMINER

GISHNOCK, NIKOLAI A

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/529,016	Applicant(s) DURRELL, ANTHONY	
	Examiner NIKOLAI A. GISHNOCK	Art Unit 3715	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2010 and 30 April 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 60-97 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 60-97 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 February 2010 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/3/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3715

DETAILED ACTION

In response to applicant's reply filed 2/3/2010 and 4/30/2010, Claims 1-60 are cancelled. Claims 61-97 are pending.

Drawings

1. Replacement drawings were received on 2/3/2010. These drawings are acceptable.

Information Disclosure Statement

2. The information disclosure statement filed 11/4/2005 and again at 2/3/2010 fail in part to comply with 37 CFR 1.98(a)(2), which requires each non-patent literature publication or that portion which caused it to be listed and all other information or that portion which caused it to be listed. See 37 CFR 1.97(2). Examiner is not at leisure to obtain a copy of "Donnie Darko", and no concise explanation of the relevance has been provided. As such, it has been placed in the application file, but the information referred to therein that fails to comply has not been considered.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 61 & 62 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Computer programs claimed as listings and data structures not claimed as embodied in computer-readable media are descriptive material per se, and are non-statutory because they do not define any structural or functional interrelationships between the program and/or data structure and other elements of a manufacture or machine.

Art Unit: 3715

The claims fail because they are not directed to a process that permits the claimed functionality to be realized. See MPEP 2106.01 I.

5. Claims 73-97 are rejected under 35 U.S.C. §101. In order to be considered patent eligible, a claimed process must contain sufficient ties to a machine, article of manufacture or a composition of matter. See *In re Comiskey*, 84 USPQ2d 1670 (Fed. Cir. 2007) and *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008). When an abstract concept has no claimed practical application, it is not patentable. The Supreme Court has reviewed process patents reciting algorithms or abstract concepts in claims directed to industrial processes. In that context, the Supreme Court has held that a claim reciting an algorithm or abstract idea can state statutory subject matter only if, as employed in the process, it is embodied in, operates on, transforms, or otherwise involves another class of statutory subject matter, i.e., a machine, manufacture, or composition of matter. "Identifying the apparatus" requires that the process claim explicitly recite the particular machine or apparatus, or recite a step that inherently involves the use of a particular machine or apparatus. The instant claims neither require the method be implemented by a particular machine, such as a computer, nor transform a particular physical article, in such a way that imposes a meaningful limit on the claims' scope and involves more than insignificant extra-solution activity. In the instant claims 73, 82, & 88, the limitation of graphically representing or displaying on a display is construed to be mere extra-solution activity, because the storing step is not central to the purpose of the method invented by applicant.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Art Unit: 3715

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 61-97 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 61, 73, 82, & 88 recite "representing a selected mood state" and "represent[ing] the proportion that each of a number of primary moods contributes to the selected mood state." It is unclear whether a mood state is selected by a user, or if the modifier "selected" is intended to mean "particular". Claims 62-72, 74-81, 83-87, 89-92, & 94-97 inherit this deficiency.

9. Claims 61-97 are further rejected under 35 U.S.C. 112, first paragraph. The specification, while being enabling for allowing a person to select a proportion of several primary moods that contribute to their state, does not reasonably provide enablement for interpretation of the graphical representations. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make or use the invention commensurate in scope with these claims. Regarding the graphical representations of Figures 9-17 and claims 61, 73, 82, & 88, it is not clear whether the primary moods groups are meant to be mutually exclusive (being plotting on positive and negative scales of Cartesian axes of "mood compass", or in the balancing "fulcrum" representation), or felt simultaneously or in ambivalency (such as in the "mood pie" "mood ring", the "quadrangle", and the FASH index). It is unclear exactly how a person should go about accurately quantifying these emotions individually or in mixture. No mechanism for standardizing these emotions on any of the claimed graphical representation is proffered other than generating statements, such as "How I now feel about my mother." in Figure 4b. It is unclear how displaying these foci allow a person to use the

Art Unit: 3715

claimed method to determine what proportion of each primary mood they feel. Regarding pages 21-35 of applicant's specification, while enabling for selecting colors, shapes, and areas to represent a mood, it is not clear, for example, how a selected mood state is blended of primary moods "Fear", "Anger", "Sad", and "Happy"; exactly why these four moods are *primary* moods; and how exactly one selects, sets, adjusts, or blends a mood-state. Claims 62-72, 74-81, 83-87, 89-92, & 94-97 inherit this deficiency.

10. Claims 61-72 will be treated as invoking USC 112 sixth paragraph. The claimed "graphical representation means" is understood to refer to an electronic device, disclosed at page 7, lines 16-23 of the specification.

11. Claims 61-72 are further rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, because it is unclear whether the claim falls within the scope of 35 U.S.C. 112, sixth paragraph. A claim limitation will be presumed to invoke 35 U.S.C. 112, sixth paragraph, if it meets the following 3- prong analysis:

- (A) the claim limitations must use the phrase "means for" or "step for; "
- (B) the "means for" or "step for" must be modified by functional language; and
- (C) the phrase "means for" or "step for" must not be modified by sufficient structure, material, or acts for achieving the specified function.

See MPEP 2181. With respect to the third prong of this analysis, when a claim element uses language that generally falls under the step-plus-function format; however, 35 U.S.C. 112, sixth paragraph still does not apply when the claim limitation itself recites sufficient acts for performing the specified function; see *Seal-Flex*, 172 F.3d at 849, 50 USPQ2d at 1234. In the instant case, claim 61 recites "storage means for storing the graphical representation..." and "a display means to display the graphical representation". In claim 61 the storage and display are the respective means for storing and displaying graphical representations. In the instant claim 64, the recited structural elements of a microprocessor, a data storage device, and a visual

Art Unit: 3715

display perform the claimed means. During examination, applicants have the opportunity and the obligation to define their inventions precisely, including whether a claim limitation invokes 35 U.S.C. 112, sixth paragraph. Thus, if the phrase "means for" or "step for" is modified by sufficient structure, material or acts for achieving the specified function, the USPTO will not apply 35 U.S.C. 112, sixth paragraph, until such modifying language is deleted from the claim limitation. If a claim limitation does include the phrase "means for" or "step for," that is, the first prong of the 3-prong analysis is met, but the examiner determines that either the second prong or the third prong of the 3-prong analysis is not met, then in these situations, the examiner must include a statement in the Office action explaining the reasons why a claim limitation which uses the phrase "means for" or "step for" is not being treated under 35 U.S.C. 112, sixth paragraph. Claims 65-72 inherit this deficiency.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Art Unit: 3715

14. Claims 61, 63, 64, 70-72, 82, 83, 88-92, & 95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn et al. (US 6,607,390 B2), hereinafter known as Glenn, in view of Sparhawk Jr. (US 6,322,503 B1), hereinafter known as Sparhawk Jr.

15. Glenn teaches a system for and a computer-implemented method of graphically representing a selected mood-state of a user (In a computer system having a storage device, a method for gathering clinical data useful in the clinical analysis and treatment of mood disorders, including such steps as displaying a main menu including a multiplicity of icons depicting inquiries to be answered by a patient; and, storing the patient's answers to the inquiries as clinical data generated on a regular basis by the patient. The method further includes selecting a point on a scale depicting the patient's current mood, Abstract) associated with a user-selected subject (in significant life events field, 8:51-56; see also Figure 10) over time (Every month, or at a frequency determined by their physician, the patient returns data to the system administrator computer, either by E-Mail over the Internet or by diskette. The data from the patient is analyzed and reports are displayed and printed. If the patient is part of a research study, data from the physician site can be aggregated with data from other patients and study sites for statistical analysis, 5:24-30), comprising: displaying a plurality of subjects (patient-entered data, 3:11-25) on a display screen (graphical user interface, 3:17-18); accepting a user-selected subject from among the plurality of subjects displayed within a menu on the display screen via an input device (mood, sleep, and medications, via main menu, 5:57-67) a graphical representation means capable of manipulation by the user for accepting a user-adjustable setting to allow the user to graphically represent a user-identified proportion for each primary mood via the graphical input screen; and also form a graphical representation of a proportion that each of the primary moods contributes to the selected mood state (Mood data is entered using a VAS scale between 0 and 100. The most extreme feelings of depression and

Art Unit: 3715

mania the patient has ever experienced define the anchor points. The patient slides the scale to the number that best represents mood over the past 24 hours, in relation to these anchor points, 6:24-35; sliding a scale is understood to be using a dimension to represent a proportion between 0 and 100); a storage means for storing the graphical representation and other graphical representations formed at other times that each of the primary moods individually contributes to the selected mood state associated with the user-selected subject, as identified by the user (patient data file, 8:23-50); and a display means to display on the display screen the adjusted graphical representation or depiction of the mood state that each of the primary mood proportions of the user associated with the user-selected subject individually contributes to the selected mood state; and allow comparison of that graphical representation with the other graphical representations (8:51-56) [Claims 61, 82, & 88].

16. Glenn teaches wherein a processor analyzes the adjusted graphical representation or depiction of the mood state associated with the user-selected subject that depicts the user-identified proportions for each of the primary moods (5:24-56) [Claims 70, 83, & 89]; allocates a score to each of the primary moods based on the analysis of the adjusted graphical representation or depiction of the mood slate associated with the user-selected subject (VAS scale, 6:25-36) [Claims 83 & 89]; and displays the score allocated for each user-identified proportion of the primary moods on the display along with the graphical depiction of the mood state associated with the user-selected subject on the display screen (Mood Vs. Time Graph, 9:60-10:35) [Claims 83 & 89] [Claims 70, 83, & 89].

17. Glenn teaches selecting display colors (7:3-13) and selecting from two primary moods, including depression, understood to be a measure of Happy vs. Sad; and mania, understood to be a measure of Fear and Anger (6:25-36). Glenn teaches wherein the person selects a primary mood and coloring in a shape of pre-defined area by the proportion of the colors being

Art Unit: 3715

representative of the proportion of how much that primary mood contributes to the selected mood state (5:48-56 and 6:16-36, sliding the colored bar as in Figure 10 is understood to be coloring in the pre-defined bar area). What Glenn fails to teach is the selected mood state being a blend of *four* primary moods [Claims 61, 82, 88, & 91]; where the four primary moods are "Fear", "Anger", "Sad", and "Happy" [Claims 61, 91, & 92]; wherein the electronic device allocates a percentage score to each of the four primary moods based on the graphical representation of the selected mood state of the user, and generates and displays a FASH (Fear/Anger/Sad/Happy) index associated with the percentage scores allocated [Claim 71]; wherein the FASH index is used to form a second graphical representation of the selected mood state of the user [Claim 72], establishing a baseline primary mood mix goal comprising a pre-determined ratio of scores for each of the four primary moods with respect to each other; generating an index of the scores allocated to each of the four primary moods; and displaying the index of the scores allocated to each of the four primary moods on the display [Claim 90], wherein the baseline primary mood mix goal is a ratio of 1:2:3:4 of the scores of the four primary moods of fear, anger, sad, and happy, respectively [Claim 91], or wherein the four primary moods comprise (1) caution, (2) assertion or courage, (3) reflection, and (4) delight [Claim 95]. However, Sparhawk Jr. teaches a method of diagnosing, tracking, and rating depressive symptoms in order to predict responses to specific treatments and guide further adjustments and interventions to treatments, detecting and quantifying intense emotional pain, including depression subtypes and major depressions with psychotic features; and provides quantitative comparisons for the results of successive treatment trials (2:61-3:5). Sparhawk Jr. teaches where the clinician asks a pre-designed question to elicit a numeric rating from the patient; each question is designed to target a depressive diagnostic criterion and to elicit a numeric or numerical rather than verbal response; to elicit a rating on depression, the clinician may ask, "on

Art Unit: 3715

average for the past seven days up to right now, how severe would you say your discouragement and/or depression have been, with 10 being the worst possible and 0 being none at all?" Once the patient provides a numeric rating, the rating is immediately jotted down in the corresponding cell on the diagnostic recording sheet in the column under the date elicited (5:4-15), and providing a severe depression diagnosis recording sheet questionnaire (17:43-18:2). Sparhawk Jr. further teaches four subjects of mood: Despair cluster {understood to be "fear"}, Melancholia cluster {understood to be "sad"}, Mood-congruent Psychotic Features {understood to be "happy"}; and Mood-incongruent Psychotic Features {understood to be "angry"} (all at 13:33-14:2; see also Figure 6). Applicant discloses in the specification at Para. 0041-48 that alternative presentation moods and colors envisaged. The blend of moods established by Sparhawk Jr. is inherently take at some baseline amount and forms an index value, which is used during reporting of the mood state. It would be a simple matter to merely have used the four primary moods as given by Sparhawk Jr. or some slight variation, at a baseline FASH index of 1:2:3:4 as the choice is mere printed matter, not functionally related to the substrate. See MPEP 2112.01(II). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have used four primary moods to establish the blend of moods selected by a user on a time basis of Glenn, as taught by Sparhawk Jr., generates and displays a FASH (Fear/Anger/Sad/Happy) index associated with the percentage scores allocated to form a second graphical representation of the selected mood state of the user (a report), establishing a baseline primary mood mix goal comprising a pre-determined ratio of scores for each of the four primary moods with respect to each other; generating an index of the scores allocated to each of the four primary moods; and displaying the index of the scores allocated to each of the four primary moods on the display, wherein the baseline primary mood mix goal is a ratio of 1:2:3:4 of the scores of the four primary moods of fear, anger, sad,

Art Unit: 3715

and happy, respectively, or wherein the four primary moods comprise (1) caution, (2) assertion or courage, (3) reflection, and (4) delight, as taught by Sparhawk Jr. in order to diagnose, track, and rate a plurality of depressive symptoms [Claims 61, 71, 72, 82, 88, 90-92, & 95].

18. Glenn teaches wherein the system includes an electronic device comprising one of a desktop computer, a laptop computer, a notebook type computer, a personal organizer, a handheld game device, and a cellular telephone (desktop computer, 5:11-14) [Claim 63].

19. Glenn teaches wherein the electronic device has a microprocessor, a visual display, an input device, and a data storage device (8:44-50 & 11:19-45) [Claim 64].

20. Claims 62, 65-69, 73, 75-79, 81, & 97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn and Sparhawk Jr., as applied to claim 61 above, and further in view of Rappaport (US 6,648,649 B2), hereinafter known as Rappaport.

21. Glenn and Sparhawk Jr. teach all the features of claim 61, as demonstrated above. What Glenn further fails teach is wherein the graphical representation means allows the user to use color or dimension to form the graphical representation of the proportion that each of the four primary moods contributes to the selected mood state [Claim 62], or wherein the visual display displays a graphical input screen that allows the user to graphically represent the proportion that each of the four primary moods contributes to the selected mood state [Claim 66], or the graphical input screen including a shape having a pre-defined area and configured to accept input from the user via the input device to define a mood state associated with the user-selected subject; accepting a user-identified portion of the pre-defined area for each of the four primary moods, each user-identified portion of the pre-defined area being entered by the user using the input device and is representative of a proportion of a corresponding one of the four primary moods that the user identifies as contributing to the mood state associated with the

Art Unit: 3715

user-selected subject; and displaying the shape on the display adjusted to depict the user-identified portions of the pre-defined area for each of the four primary moods within the shape on the display as a graphical depiction of the mood state as a blend of the four primary moods in the user-identified portions that each of the four primary moods respectively contributes to the mood state associated with the user-selected subject as identified by the user [Claim 73].

However, Rappaport teaches apparatus allows the user to construct color-coded words, symbols, and pictures to characterize the relationships between the factor analyzed (5:25-28). Base is further subdivided into first, second, third, and fourth *semicircular concentric rings*, all centered about reference point of substantially linear edge of the perimeter of base (6:57-63; See also Figure 2). Rappaport further teaches, during use, in response to a question asked related to space 1, the user marks space 1 with words, symbols, and/or pictures with a designated marker or with a red marker. The user marks space 2 with words, symbols, and/or pictures with a designated marker or with yellow supplied marker. A similar process is followed for space 3 (orange), and for spaces 4, 5, 6, 7, 8, 9, 10, 11, and 12. In this embodiment, all spaces between 0 to 36 degrees are colored in yellow, all spaces between 36 to 72 degrees are colored in orange, all spaces between 72 and 108 degrees are colored in red, all spaces between 108 and 144 degrees are purple, and the spaces between 144 and 180 degrees are blue. When many or all of the spaces have been revealed and marked, the apparatus has been used to create a color-coded paper or plastic hemiannular device (all at 7:34-8:36). Rappaport teaches software means also capable of displaying prompts on visual display means to interact with the user for posing questions related to the first and second factors. The user may enter responses via keyboard and/or mouse by means well known in the art. It is possible that graphical and/or textual and/or color markers indicative of the user's responses can be placed on the appropriate subsections of graphical areas; Because graphic image is displayed

Art Unit: 3715

electronically, certain liberties may be taken to enhance the display. For example, as a user completes answers, the colors may be shaded into each other to result in a more aesthetically pleasing display. Further, when answering questions in rings, a space may be further divided into a series of slices to reflect a series of questions related to the subject matter covered in that slice. Multiple questions may be particularly helpful when exploring inner rings, but could be used on any ring and in any space, 24:34-26:42; see also Figure 6). It would be a simple matter to merely have defined the angle or area of a concentric ring, as taught by Rappaport, in the mood recording device of Glenn, in order to graphically analyze a user's mood about a subject. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention of Glenn was made, accepting a user-identified portion of the pre-defined area for each of the four primary moods, each user-identified portion of the pre-defined area being entered by the user using the input device and is representative of a proportion of a corresponding one of the four primary moods that the user identifies as contributing to the mood state associated with the user-selected subject; and displaying the shape on the display, as taught by Rappaport, in light of the teachings of Sparhawk Jr., in order to use size to assist a user graphically in analyzing a selected mood state [Claims 62, 66, & 73].

22. Glenn teaches a step of displaying a select menu (to the system configuration, 7:3-13; see also Configure Program Parameters, Figure 5, Items 502 & 503). What Glenn and Sparhawk Jr. further fail to teach is wherein the electronic device operates in accordance with instructions stored on an electronic medium to display a selection menu that allows the user to assign a different color to each of the four primary moods [Claim 65], or wherein the graphical input screen comprises a shape having a pre-defined area that is able to be colored in with the colors assigned to each of the four primary moods by the user in proportion that each of the four primary moods contributes to the selected mood state [Claim 67], or wherein the user selects a

Art Unit: 3715

first primary mood and then the user is asked to color in a portion of the pre-defined area that is representative of how much the first primary mood contributes to the selected mood state, the process being repeated for each of the four primary moods [Claim 68]; and accepting a user-identified dedicated color for each of the four primary moods entered by the user; and displaying each user-identified portion of the shape colored in with the user-identified dedicated color for each of the four primary moods [Claim 79]. However, Rappaport teaches apparatus allows the user to construct color-coded words, symbols, and pictures to characterize the relationships between the factor analyzed (5:25-28). Rappaport further teaches, during use, in response to a question asked related to space 1, the user marks space 1 with words, symbols, and/or pictures with a designated marker or with a red marker. The user marks space 2 with words, symbols, and/or pictures with a designated marker or with yellow supplied marker. A similar process is followed for space 3 (orange), and for spaces 4, 5, 6, 7, 8, 9, 10, 11, and 12. In this embodiment, all spaces between 0 to 36 degrees are colored in yellow, all spaces between 36 to 72 degrees are colored in orange, all spaces between 72 and 108 degrees are colored in red, all spaces between 108 and 144 degrees are purple, and the spaces between 144 and 180 degrees are blue. When many or all of the spaces have been revealed and marked, the apparatus has been used to create a color-coded paper or plastic hemiannular device (all at 7:34-8:36). Rappaport teaches software means also capable of displaying graphical and/or textual and/or color markers indicative of the user's responses can be placed on the appropriate subsections of graphical areas; because graphic image is displayed electronically, certain liberties may be taken to enhance the display. For example, as a user completes answers, the colors may be shaded into each other to result in a more aesthetically pleasing display (24:34-26:42; see also Figure 6). It would be a simple matter to merely have used colors in the mood system display of Glenn and Sparhawk Jr., as suggested by Rappaport, in order to result in a

Art Unit: 3715

more aesthetically pleasing display when assisting a user in graphically analyzing a selected mood state. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention of Glenn was made, to display a selection menu that allows the user to assign a different color to each of the four primary moods, or wherein the graphical input screen comprises a shape having a pre-defined area that is able to be colored in with the colors assigned to each of the four primary moods by the user in proportion that each of the four primary moods contributes to the selected mood state, as suggested by Rappaport, in light of the teachings of Sparhawk Jr., in order to result in a more aesthetically pleasing display [Claims 65, 67, 68, & 79].

23. What Glenn and Sparhawk Jr. further fail to teach is wherein the graphical input screen comprises a depiction of a plurality of colored rings of different dimensions, the plurality of colored rings being selectable with the input device such that a predominant primary mood associated with a subject related to the selected mood state may be selected, and then subsequent primary moods selected via the input device are sized smaller in diameter than, and inwardly positioned with respect to, the one of the plurality of colored rings representing the predominant primary mood [Claim 69]; or presenting a set of colored rings of varying diameters on the display; and accepting user selection of a ring color representative of one of the four primary moods and of a ring size of a particular diameter representative of the proportion that the one of the four primary moods contributes to the mood state associated with the user-selected subject [Claim 81]; wherein the shape having the pre-defined area comprises a set of concentric rings, each concentric ring graphically depicting one of the four primary moods and is sized in proportion to the user-identified portion corresponding to the one of the four primary moods that the concentric ring graphically depicts [Claims 75 & 97], or accepting a user-selected dimension for one or more concentric rings [Claim 76]. However, Rappaport teaches

Art Unit: 3715

subdividing a base into first, second, third, and fourth *semicircular concentric rings*, all centered about reference point of substantially linear edge of the perimeter of base (6:57-63; See also Figure 2). Rappaport further teaches, during use, in response to a question asked related to space 1, the user marks space 1 with words, symbols, and/or pictures with a designated marker or with a red marker. The user marks space 2 with words, symbols, and/or pictures with a designated marker or with yellow supplied marker. A similar process is followed for space 3 (orange), and for spaces 4, 5, 6, 7, 8, 9, 10, 11, and 12. In this embodiment, all spaces between 0 to 36 degrees are colored in yellow, all spaces between 36 to 72 degrees are colored in orange, all spaces between 72 and 108 degrees are colored in red, all spaces between 108 and 144 degrees are purple, and the spaces between 144 and 180 degrees are blue. When many or all of the spaces have been revealed and marked, the apparatus has been used to create a color-coded paper or plastic hemiannular device (all at 7:34-8:36). Rappaport teaches that, as a user completes answers, the colors may be shaded into each other to result in a more aesthetically pleasing display. Further, when answering questions in rings, a space may be further divided into a series of slices to reflect a series of questions related to the subject matter covered in that slice. Multiple questions may be particularly helpful when exploring inner rings, but could be used on any ring and in any space, 24:34-26:42; see also Figure 6). It would be a simple matter to merely have the graphical input screen comprises a depiction of a plurality of colored rings of different diameters, the predominant primary mood associated with a subject related to the selected mood state may be selected, and then subsequent primary moods selected via the input device are sized smaller in diameter than, and inwardly positioned with respect to, the one of the plurality of colored rings representing the predominant primary mood, used the four primary moods as given by Glenn and Sparhawk Jr. as the choice of merely varying an angle or a diameter or a color of a given concentric ring is mere printed matter, not

Art Unit: 3715

functionally related to the substrate. See MPEP 2112.01(II). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have the graphical input screen of Glenn, in light of the teachings of Sparhawk Jr., comprise a depiction of a plurality of colored rings of different dimensions, the plurality of colored rings being selectable with the input device such that a predominant primary mood associated with a subject related to the selected mood state may be selected, and then subsequent primary moods selected via the input device are sized smaller in diameter than, and inwardly positioned with respect to, the one of the plurality of colored *concentric* rings representing the predominant primary mood; or present a set of colored rings of varying diameters on the display; and accept user selection of a ring color representative of one of the four primary moods and of a ring size of a particular diameter representative of the proportion that the one of the four primary moods contributes to the mood state associated with the user-selected subject, as suggested by Rappaport, in order to better graphically depict and allow analysis of a selected mood state[Claims 69, 75, 76, 81, & 97].

24. What Glenn fails to teach is wherein the four primary moods comprise (1) fear, (2) anger, (3) sad, and (4) happy [Claim 77], or wherein the four primary moods comprise (1) caution, (2) assertion or courage, (3) reflection, and (4) delight [Claim 78]. However, Sparhawk Jr. teaches a method of diagnosing, tracking, and rating depressive symptoms in order to predict responses to specific treatments and guide further adjustments and interventions to treatments, detecting and quantifying intense emotional pain, including depression subtypes and major depressions with psychotic features; and provides quantitative comparisons for the results of successive treatment trials (2:61-3:5). Sparhawk Jr. teaches where the clinician asks a pre-designed question to elicit a numeric rating from the patient; each question is designed to target a depressive diagnostic criterion and to elicit a numeric or numerical rather than verbal response;

Art Unit: 3715

to elicit a rating on depression, the clinician may ask, "on average for the past seven days up to right now, how severe would you say your discouragement and/or depression have been, with 10 being the worst possible and 0 being none at all?" Once the patient provides a numeric rating, the rating is immediately jotted down in the corresponding cell on the diagnostic recording sheet in the column under the date elicited (5:4-15), and providing a severe depression diagnosis recording sheet questionnaire (17:43-18:2). Sparhawk Jr. further teaches four subjects of mood: Despair cluster {understood to be "fear"}, Melancholia cluster {understood to be "sad"}, Mood-congruent Psychotic Features {understood to be "happy"}; and Mood-incongruent Psychotic Features {understood to be "angry"} (all at 13:33-14:2; see also Figure 6). Applicant discloses in the specification at Para. 0041-48 that alternative presentation moods and colors envisaged. The blend of moods established by Sparhawk Jr. is inherently take at some baseline amount and forms an index value, which is used during reporting of the mood state. It would be a simple matter to merely have used the four primary moods as given by Sparhawk Jr. or some slight variation, at a baseline FASH index of 1:2:3:4 as the choice is mere printed matter, not functionally related to the substrate. See MPEP 2112.01(II). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have used four primary moods to establish the blend of moods selected by a user on a time basis of Glenn, as taught by Sparhawk Jr., generates and displays a FASH (Fear/Anger/Sad/Happy) index associated with the percentage scores allocated to form a second graphical representation of the selected mood state of the user (a report), establishing a baseline primary mood mix goal comprising a pre-determined ratio of scores for each of the four primary moods with respect to each other; generating an index of the scores allocated to each of the four primary moods; and displaying the index of the scores allocated to each of the four primary moods on the display, wherein the baseline primary mood mix goal is a ratio of 1:2:3:4

Art Unit: 3715

of the scores of the four primary moods of fear, anger, sad, and happy, respectively, or wherein the four primary moods comprise (1) caution, (2) assertion or courage, (3) reflection, and (4) delight, as taught by Sparhawk Jr. in order to diagnose, track, and rate a plurality of depressive symptoms [Claims 77 & 78].

25. Claims 74 & 96 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn, Sparhawk Jr., and Rappaport, as applied to claim 61 above, and further in view of Shovers (US), hereinafter known as Shovers.

26. Glenn, Sparhawk Jr., and Rappaport teach all the features of claim 61, as demonstrated above. What Glenn, Sparhawk Jr., and Rappaport further fail teach is wherein the shape having the pre-defined area comprises a pie chart, each slice of the pie chart graphically depicting one of the four primary moods and is sized in proportion to the user-identified portion corresponding to the one of the four primary moods that the slice of the pie chart graphically depicts [Claim 74], or wherein the graphical depiction of the mood state associated with the user-selected subject comprises a pie chart, each slice of the pie chart depicting one of the four primary moods and is sized in proportion to the user-identified proportion corresponding to the one of the four primary moods that the slice depicts [Claim 96]. However, Shovers teaches a personality analyzer that, based upon the analysis of the key words, makes a correlation is made between the selected key words and six pure {primary} personality types. This correlation may be expressed as a percentage, in a bar graph, a pie chart, or otherwise. It would be a simple matter to merely have displayed the personality graphical data in the device of Brown, Sparhawk Jr., and Rappaport in the form of a pie chart, as discussed by Shovers, in order to better graphically demonstrate the percentage, proportion, or blend of primary emotions in a mix. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to merely have

Art Unit: 3715

displayed the personality graphical data in the device of Brown, Sparhawk Jr., and Rappaport in the form of a pie chart, as discussed by Shovers, to display mood blend data in a more understandable fashion [Claims 62, 66, & 73].

27. Claim 80 is rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn and Sparhawk Jr., and Rappaport, as applied to claims 61 & 73 above, and further in view of Von Fellenberg (US 4,627,818 A), hereinafter known as Von Fellenberg.

28. Glenn, Sparhawk Jr., and Rappaport teach all the features of claim 61 & 73, as demonstrated above. What Glenn, Sparhawk Jr., and Rappaport fail to teach is plotting values on a Cartesian plane, with each axis of the Cartesian plane being representative of a dedicated one of the four primary moods [Claim 80]. However, Von Fellenberg teaches a personality testing method displaying the data on a multi-axis Cartesian plane, on a respective number of axes (3:45-4:56; see also Figure 3). It would be a simple matter to merely have displayed the data in the device of Glenn, Sparhawk Jr., and Rappaport in the manner of a Cartesian coordinate graph, having each of the mood subject values associated with a respective axis provided, as suggested in Von Fellenberg. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have displayed the graphical mood data of Glenn in a Cartesian graph, as suggested by Von Fellenberg, in light of the teachings of Sparhawk Jr. and Rappaport, in order to better graphically demonstrate a mood of a dysthemic individual over time [Claim 80].

29. Claims 84-87, 93, & 94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn and Sparhawk Jr., and Rappaport, as applied to claims 61 & 82 above, and further in view of Brown (US 5,040,988 A), hereinafter known as Brown.

Art Unit: 3715

30. Glenn, Sparhawk Jr., and Rappaport teach all the features of claim 61 & 82, as demonstrated above. What Glenn, Sparhawk Jr., and Rappaport fail to teach is using the scores allocated to generate a second graphical representation of the mood state of the user associated with the user-selected subject, the second graphical representation comprising a mood balance tower having a first balanced arm and a second balanced arm, the first balanced arm representing a first set of two primary moods and the second balanced arm representing a second set of two primary moods that is different from the first set of four primary moods, a length of each balanced arm being based on the scores allocated to the two primary moods being represented by each balanced arm, respectively [Claims 84, 85, & 93]; the first balanced arm representing primary moods of fear and anger, and the second balance arm representing primary moods of sad and happy [Claims 85-87]; when the score allocated to the primary mood of fear is greater than or less than the score allocated to the primary mood of anger, the first balanced arm is depicted on the display screen as being unbalanced, with a degree of unbalance depicted on the display screen being dependent on a difference between the scores allocated to the primary moods of fear and anger, respectively [Claims 86 & 94], when the score allocated to the primary mood of sad is greater than or less than the score allocated to the primary mood of happy, the second balanced arm is depicted on the display screen as being unbalanced [Claims 87 & 94]. However, Brown teaches a visual mood and cause having a display board upon which indicators specifically identifying a person's mood and the perceived cause for such mood are visually displayed, and an indicator, consisting of multiple symbols of different colors, such as flags or illuminated lamps, from which the symbol having the color corresponding to a particular mood is selected and displayed along the top edge of the display board, by which the person can communicate a responsive action which he or she deems desirable, and an indicator for communicating the perceived cause for such a mood consists of

Art Unit: 3715

multiple indicia, such as printed words or phrases, representing multiple potential causes for a number of various moods; and arranged in columns on the face of the display board and one is selectively identified by displaying adjacent thereto a marker, such as a peg or illuminated lamp (1:57-2:8). Brown further teaches where a person wishing to communicate their mood selects a flag having the color corresponding to that mood and places it in a hole at the top of the main display board on the same side as that person's set of flags. For example, a red flag can be selected and placed in the hole for communicating an angry mood on the part of the person selecting the flag. To indicate the perceived cause for such a mood, the person places a small peg, several of which can be stored in the receptacle at the bottom of the main display board, into a hole alongside the word or phrases in the area of printed matter which best describes such cause. As with the placement of the flag in the top hole, the peg is placed in the hole lying on the same side of the area of printed matter as the set of flags corresponding to the individual using those flags. Similarly, to indicate the desired action responsive to such a mood, the person places another peg, also retrieved from the receptacle, in a hole adjacent the word or phrase contained within the area of printed matter which indicates the desired responsive action. Once the foregoing acts have been completed, a person's mood, the perceived cause for such mood and the action they believe to be responsive and desirable can be communicated visually without requiring any verbal exchanges or confrontations between that person and the one to whom the communication is directed. Similarly, if another person, such as the first person's spouse, wishes to also communicate their mood, its perceived cause and a responsive action, they can do so simultaneously by inserting a flag from their set of flags and pegs into the appropriate holes. The pegs can also be color coded as appropriate so as to indicate the individual whose perceived mood cause and desired responsive action are being indicated. An alternative embodiment of the visual mood and cause indicator in accordance with the present

Art Unit: 3715

invention uses colored lamps in place of the colored flags. The appropriate color corresponding to a person's mood is selected and the appropriate lamp can be lit by means known in the art by selecting the desired lamp by way of electrical switches. The display board can be of virtually any size or shape as desired, other than I-shaped or T-shaped, the display board can be rectangular, triangular or even some completely asymmetrical shape, as desired (all at 2:48-4:34; see also Figures 1 & 2, and Tables 1-3). The arrangement of colored mood flags on the outstretched arms of Brown is best understood to be "balancing" the primary emotions along two arms (top and bottom, see Figure 1). It would be a simple matter to merely have balanced the arms of a graphical display with two axes, as taught by Brown, using the emotion VAS scores in the device of Brown, in order to better demonstrate a balance of primary emotions and causes such that another may analyze the user's particular blend of emotions over time. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to using the VAS scores of the invention of Glenn to generate a second graphical representation of the mood state of the user associated with the user-selected subject, the second graphical representation comprising a mood balance tower having a first balanced arm and a second balanced arm, the first balanced arm representing a first set of two primary moods and the second balanced arm representing a second set of two primary moods that is different from the first set of four primary moods, a length of each balanced arm being based on the scores allocated to the two primary moods being represented by each balanced arm; the first balanced arm representing primary moods of fear and anger, and the second balance arm representing primary moods of sad and happy; when the score allocated to the primary mood of fear is greater than or less than the score allocated to the primary mood of anger, the first balanced arm is depicted on the display screen as being unbalanced, with a degree of unbalance depicted on the display screen being dependent on a difference between the scores

Art Unit: 3715

allocated to the primary moods of fear and anger; when the score allocated to the primary mood of sad is greater than or less than the score allocated to the primary mood of happy, the second balanced arm is depicted on the display screen as being unbalanced, as suggested by Brown, and further in light of the teachings of Sparhawk Jr. and Rappaport, in order to better visually communicate the perceived severity and cause of a user's feelings and emotions [Claims 84-87, 93, & 94].

Response to Arguments

31. Applicant's arguments with respect to claims 1-60 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

32. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bennett et al. (US 7,033,181 B1) discloses a therapy treatment device using mood cards to perform a psychosocial evaluation. Correa et al. (US 5,882,203 A) discloses methods of using a questionnaire to detect depression. Kawamoto et al. (US 5,367,454 A) discloses computer recording of emotions including fear, anger, happiness, and sadness. Lui et al. (US 2002/0009696 A1) discloses a computer-implemented graphical method for communicating emotions and needs. Ramsey (US 5,580,254 A) discloses a system of communicating emotions and moods using color-coded cards. Rappaport (US 6,443,734 B1) discloses a method and apparatus for biopsychosocial analysis. Sadka (US 2003/0138760 A1) discloses a method of determining personality behavior based on a user's selection of colors.

Art Unit: 3715

33. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIKOLAI A. GISHNOCK whose telephone number is (571)272-1420. The examiner can normally be reached on M-F 11:00a-7:30p EST (8:00a-4:30p PST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan M. Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3715

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5/8/2010

/N. A. G./

Examiner, Art Unit 3715

/XUAN M. THAI/

Supervisory Patent Examiner, Art Unit 3715